APPEAL NO. 020196
FILED MARCH 5, 2002

Following a contested case hearing held pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), on January 3, 2002, the hearing officer resolved the sole disputed issue by concluding that the first certification of maximum medical improvement (MMI) and impairment rating (IR) assigned to the respondent (claimant) did not become final under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.5(e) (Rule 130.5(e)). On appeal, the appellant (carrier) contends that the evidence does not support the hearing officer's finding that the first assigned IR was invalid due to inadequate treatment, one of the exceptions contained in the version of Rule 130.5(e) which became effective March 13, 2000; that the claimant's contention at the hearing was that the first assigned IR was invalid due to a change in the condition of his injury; and that a change in condition is not an exception to the finality provisions of Rule 130.5(e). The file does not contain a response from the claimant.

DECISION

Affirmed on other grounds.

One of the doctors who treated the claimant testified that when the MMI date of October 20, 2000, and the initial IR of 11% was assigned for the claimant's left knee injury by a required medical examination doctor for the carrier on October 20, 2000, another of the claimant's treating doctors then agreed with the MMI date and IR because it was felt that although a complete knee replacement was a probable eventuality, the claimant should have three to four good years with the therapy and arthroscopic surgery he had already received; that the knee deteriorated much more rapidly than had been anticipated; and that the claimant underwent knee replacement surgery on August 21, 2001. At the hearing, the claimant contended that his rapidly changed condition should invalidate the 11% IR and prevent it from becoming final under Rule 130.5(e), while the carrier pointed out that a change in condition was not one of the three exceptions to finality stated in Rule 130.5(e) and that there was no evidence whatsoever of misdiagnosis or improper or inadequate treatment such as might invalidate the IR. The hearing officer found that the claimant had received adequate and proper treatment at the time the first IR was assigned but that such treatment "was ultimately determined to be inadequate to treat the compensable injury and the inadequacy of the treatment is such that it renders the certifications of MMI or [IR] invalid." Based on these findings, the hearing officer concluded that the first certification of the MMI date and the IR did not become final.

While we agree with the carrier that there is no evidence of improper or inadequate treatment and that the claimant was urging changed condition as the basis for invalidating the IR, a basis not provided for in Rule 130.5(e), it is not necessary for us to resolve this appeal on those grounds. The version of Rule 130.5(e) effective January 25, 1991, was considered and determined invalid in Fulton v. Associated Indemnity Corporation, 46 S.W.3d 364 (Tex. App.-Austin 2001, pet. denied). The Appeals Panel has since applied the decision in Fulton to both versions of Rule 130.5(e). Texas Workers' Compensation Commission Appeal No. 013201-s, decided February 21, 2002, and Texas Workers'

Compensation Commission Appeal No. 020014-s, decided February 26, 2002. Accordingly, we affirm the hearing officer's determination that the first certification of MMI and IR did not become final under Rule 130.5(e), but we do so based on the Fulton decision and the above-cited decisions of the Appeals Panel.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **NATIONAL FIRE INSURANCE COMPANY OF HARTFORD** and the name and address of its registered agent for service of process is

CT CORPORATION
350 N. ST. PAUL STREET
DALLAS, TEXAS 75201.

Philip F. O'Neill
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Edward Vilano
Appeals Judge